

1 A Yes.

2 Q And what would you do with Estella?

3 A They came to our house to observe her and to tell us
4 things that we could do to help her progress, and then we
5 went to a playgroup at their office once a week.

6 Q Now, at some point in Estella's development --
7 incidentally, did you notice any problems in her major
8 developmental milestones?

9 A Walking or -- well, she never crawled. We were
10 concerned about that, but walking she did fine.

11 Q At some point in her development did you start to notice
12 any unusual behaviors or some behaviors that may have
13 concerned you?

14 A Around 20 months.

15 Q This would be the year 2001?

16 A Yes.

17 Q And what was the context in which you began to observe
18 these behaviors, and what were the behaviors that you
19 observed?

20 A She just was very high-energy, hyper. She ran
21 everywhere. She would yell and scream. She became
22 aggressive, especially with other children. She just didn't
23 have social skills. She didn't know how to engage with
24 other children at all.

25 Her sleep was getting worse. She never had good

1 sleeping patterns, but around this age it was like every two
2 hours we had to get up and put her back to sleep.

3 Q By this time was your second child born?

4 A Not yet.

5 Q When was he born?

6 A January 18, 2002.

7 Q When he was born, did Estella exhibit any of these kinds
8 of behaviors with this child?

9 A Extremely aggressive.

10 Q What was his name?

11 A Cy Henry.

12 Q What did you notice in terms of her behavior toward him?

13 A Physical aggression. She -- the first time she met him,
14 she hit him in the face. That was in the hospital still,
15 and there was an incident where she was eating and got up
16 and scratched a fork against his face.

17 Q How did you and Silas respond to these behaviors?

18 A We would talk with her and whether she understood that
19 that behavior was not appropriate and it hurt him.

20 Q I'm not only speaking about the behaviors toward Cy
21 Henry, but about behaviors --

22 A The same. We'd try to talk with her and monitor her
23 closely.

24 Q Was this in the context of some kind of a playgroup or a
25 social setting in which there were other children?

1 A Sent them to you.

2 MR. APPEL: Thank you.

3 Q In terms of Estella's reading skills and her math skills
4 in first grade, what has Mrs. Yamanaka told you?

5 A She's concerned. She's below the average, not doing too
6 well.

7 Q Has she been receiving any additional services now?

8 A Earlier in the school year, Mrs. Yamanaka let me know
9 that she wanted to request for an in-room reading aid for
10 Estella.

11 Q Has that been provided?

12 A Yes.

13 Q Has anything been done about her mathematics yet?

14 A No.

15 Q Emily, how is Estella currently doing at home?

16 A At home it's -- she's defiant. It's hard to discipline
17 her because, like I mentioned before, she doesn't care about
18 consequences: She talks back. She's aggressive. She
19 doesn't hesitate to put her hands on me, grab me or hit me.
20 She has -- her social skills have to be -- her play has to
21 be very focused. When she plays with friends, it works well
22 if it's one on one at our house in her environment. When
23 she goes out and there's a lot of kids, it's overwhelming
24 for her; and it's -- it brings up some insecurities in her,
25 and she just -- she doesn't know how to play with a lot of

1 (Counsel conferred.)

2 MS. GOODWIN: No further questions.

3 THE COURT: Any followup, Mr. Appel?

4 MR. APPEL: No, your Honor.

5 THE COURT: Thank you very much, Ms. Calhoun.

6 You may step down.

7 (Witness excused.)

8 THE COURT: Is the thought now we will set up
9 the video equipment?

10 MR. APPEL: Actually, your Honor, I would like
11 to call Captain Calhoun.

12 THE COURT: All right.

13 MR. APPEL: But after that's done, I guess we
14 can play the video.

15 Captain Calhoun, please.

16 SILAS JAMES CALHOUN, sworn

17 DIRECT EXAMINATION

18 BY MR. APPEL

19 Q Would you state your name, please.

20 A Silas James Calhoun.

21 Q Silas, where were you born?

22 A Washington, D.C.

23 Q How old are you now?

24 A I'm 34 years old.

25 Q What was your family like? How many brothers and

1 sisters -- well, actually, you only have brothers.

2 How many brothers did you have?

3 A I had five brothers.

4 Q Did you grow up in Washington?

5 A Yes.

6 Q Which elementary school and high school did you go to?

7 A I went to St. Francis Desalle Elementary School,
8 followed by Archbishop Carroll High School.

9 Q During your elementary school years in particular, did
10 you have any learning disabilities?

11 A No, sir.

12 Q Did anybody tell you you had any behavioral problems?

13 A No.

14 Q Did you ever get any special educational services?

15 A No.

16 Q Any tutoring?

17 A No.

18 Q Was there any history, to your knowledge, in your
19 family, that is your parents or your brothers, of any
20 hyperactivity or impulsivity or inattention?

21 A No.

22 Q Did anybody have any learning disabilities in the
23 family?

24 A No.

25 Q Was there any history of substance abuse in your family?

1 A No.

2 Q How did you do in high school?

3 A I was a B student. I played a lot of sports.

4 I also did numerous extracurricular activities. I
5 worked at the soup kitchen on specific days, especially on
6 Thanksgiving. I was very involved in high school and
7 activities.

8 Q Were you also a musician?

9 A Yes.

10 Q Did you attend Northeastern University?

11 A Yes.

12 Q Was that on a scholarship?

13 A Yes.

14 Q An athletic scholarship?

15 A Yes, sir.

16 Q And how did you do at Northeastern?

17 A I did really well. I was predominantly a C-plus
18 student.

19 Again, I had taken on a lot of additional
20 activities. My latter two years I joined ROTC and became an
21 officer immediately upon graduation.

22 Q What was your major?

23 A I majored in communications, with a minor in electrical
24 engineering technology.

25 Q Did you get your degree?

1 A Yes.

2 Q What was your degree in?

3 A It was a bachelor of science.

4 Q After you graduated from Northeastern, what did you do?

5 A I was -- again, like I just expressed, I was immediately
6 commissioned, and right after that my commander at ROTC hand
7 picked me to become the Gold Bar Recruiter for the ROTC
8 program at Northeastern.

9 Q What is that?

10 A Gold Bar Recruiter, basically they have one per every
11 ROTC program amongst all the universities in the US, and
12 it's a prestigious selection. I did that for about six
13 months, and it is to recruit, go out in the university,
14 visit other local communities, and try to preach the word,
15 if you will, about ROTC and getting folks to join.

16 Q Did you receive a commission, by the way, after you
17 graduated?

18 A Yes.

19 Q What rank were you?

20 A I was a second lieutenant in the infantry.

21 Q What is your rank today?

22 A I'm a captain in the United States Army.

23 Q What branch of the service?

24 A Signal Corps.

25 Q How did it come to be that you moved from the infantry

1 to the signal corps?

2 A It was a vast change.

3 Basically, once I moved back to Massachusetts from
4 a short-lived term in Korea, I had no other options other
5 than to join the signal corps based on my duty assignment.
6 There were no active infantry battalions or divisions in
7 Massachusetts, because I was specifically given a
8 compassionate reassignment due to family matters.

9 Q When you're speaking of this compassionate reassignment,
10 this is because of what had happened to Estella?

11 A Yes, sir.

12 Q So that compassionate reassignment allowed you to not
13 have to go back to Korea and remain in Massachusetts?

14 A Correct.

15 A compassionate reassignment, it requires an 06
16 signature, a colonel and above, to endorse orders to send
17 you back based on compassionate reasons, and they could be
18 for severe family matters. It could be for marital --
19 anything having to do with you and your immediate family.

20 The Army understands that we need our soldiers, we
21 need our troops, and it's best to keep them close to their
22 families in events that occur.

23 Q I will get back to this in a little while, but the
24 colonel -- who is the colonel who approved your
25 compassionate reassignment? What was his name?

1 A My compassionate reassignment was approved by my
2 immediate battalion commander, but it was endorsed by
3 Colonel Armstead, who is the 66th -- at that time, 66th
4 Medical Group Commander at Hanscom Air Force Base.

5 Q So Colonel Armstead was the one who was in command of
6 all the medical facilities at Hanscom?

7 A Yes, sir.

8 Q What do you do in the Army as a signal corps officer?

9 A I am a chief automations officer for a Stryker brigade,
10 the 5th Stryker Brigade, in the United States Army.

11 Q What is that?

12 A A Stryker brigade or --

13 Q I'm sorry.

14 What is your job as chief automations officer?

15 What does that entail?

16 A I manage a 3,000 personnel network having to do deal
17 with three separate networks: Top secret, secret and
18 nonclassified. I ensure the security and informational
19 assurance for all the computers and systems that are
20 attached to that network.

21 Q Did you receive some specialized training, computer
22 training, at Northeastern or after Northeastern to do that?

23 A Yes.

24 I went back to Northeastern during the time once I
25 received my compassionate reassignment, and I did a

1 A Yes.

2 Q What generally do you remember of significance about
3 those visits --

4 A I remember --

5 Q -- in particular, I just want to focus here about the
6 weighing?

7 A Oh.

8 During the very first visit, I noticed that she was
9 fully clothed. The airman, or whoever the tech was, I
10 believe it was Airman Best. He picked her right up out of
11 the car seat and put her right on the scale.

12 Again, I don't know the full extent of what went
13 on, but I do remember vividly him picking her up out of the
14 car seat and placing her immediately on the scale.

15 Q Do you recall anything else about that first visit? Do
16 you recall anything about talking to Dr. Daub or anything
17 else that happened on the first visit?

18 A Yes.

19 The vitals was a brief visit. After that, we were
20 immediately sent to his office, and we sat down and
21 basically waited. I was anxious because it was our first
22 visit as well.

23 Q I take it that the vitals were taken in a separate place
24 from where Dr. Daub was?

25 A Yes.

1 Q Do you remember anything about the second visit?

2 A Yes.

3 Q What do you remember?

4 A Same procedure. We came in. We get processed with our
5 medical records. We get sent back. We're brought to a
6 vitals room, and I'm almost certain it's the same exact
7 room. But, again, they place Estella right on the scale
8 fully clothed, and from there we went straight to Dr. Daub's
9 office.

10 Q Do you remember anything about what happened in Dr.
11 Daub's office on that day?

12 A I know we -- he just talked to us. He mainly talked to
13 Emily. I think I was holding Estella at that time.

14 Some of the things that he expressed was the
15 jaundice. A lot of these terms I didn't even know. It was
16 all new to me, and that's basically what I can remember.

17 Q Do you remember coming back for the visit on March 3rd
18 as well? This would be the third visit?

19 A Yes.

20 Q Do you remember anything about that visit?

21 A Well, we were sort of rushing. Emily was -- she was
22 telling me that, you know, we had to hurry up and get there.
23 Again, it's a long haul coming from the South Boston area.
24 So we got stuck in traffic. I dropped them off. Eventually
25 I came inside, and we were seen at about that time, but

1 that's basically all I can remember.

2 Q You remember -- you remember something about seeing
3 Dr. Daub and him saying -- do you remember anything that he
4 said?

5 A He said something about her weight. And I know from
6 that point he explained to us that there was nothing else
7 that they can do there at Hanscom Clinic. We're going to
8 have to send you guys up to Emerson, which was up the
9 street. He gave me the directions. We left from there.

10 Q Did you remain with Estella and Emily at Emerson?

11 A Yes.

12 Q While you were at Emerson, were you present for any
13 conversations with Dr. Russell Coleman?

14 A He came in -- I believe he came in after we spoke with
15 Dr. Sutton. I had a conversation with Dr. Sutton. She
16 spoke to the both of us. She explained to us what we
17 were -- going on. And then Dr. Coleman sort of introduced
18 himself. He explained he was working at Emerson, and he
19 also was a pediatrician at Hanscom Clinic.

20 He said a few things about, you know, her weight
21 and the proper weighing procedure, and that it's not
22 standard operating procedures on how they actually conducted
23 it.

24 MS. GOODWIN: Objection.

25 THE COURT: Overruled.

1 Q Anything else that you remember from that conversation?

2 A Yes. I was getting ready to finish.

3 And also from there he said that he will go back
4 and talk to the chain of command to make sure that everyone
5 is on the same page.

6 Q Now, at some point in time did you have any further
7 conversations with anybody at the base about these weighing
8 procedures and what had happened?

9 A Yes.

10 This didn't -- I didn't actually get an opportunity
11 to go back to Hanscom Clinic until the matter had actually
12 worsened, and, again, I was on the tail end of my leave. So
13 my whole leave from Korea has been pretty eventful,
14 especially Estella's hospitalization, admitted to Emerson,
15 and eventually going to Children's Hospital.

16 During that week while she was in Children's
17 Hospital, I got an opportunity to meet with the Commander,
18 Colonel Armstead, and I spoke with him. I told him what was
19 on my mind. I was really disappointed.

20 And he expressed to me that he has spoken to
21 everyone in the clinic.

22 I asked him what happened to Dr. Daub.

23 He said that what had actually happened to him he
24 can't discuss in this forum, but he has spoken to him.

25 He also -- well, I actually had explained to him

1 the conversation that I had with Dr. Coleman, but he already
2 knew what actually went on.

3 So our conversation was pretty much to wrap up the
4 sequence of events, to discuss what will happen next.

5 I also explained -- the purpose of the visit was to
6 go to him so that we can get a pediatrician for Estella.

7 Estella was in the NICU for a few days, and we had
8 to find a pediatrician, who was specifically assigned to
9 her, and I had to get his permission and his approval to get
10 a local pediatrician other than the doctors or pediatricians
11 that are at Hanscom Clinic.

12 Q And how did you go about doing that with Colonel
13 Armstead?

14 A That was something that we wanted to do, because at this
15 point we were just -- we were just really shaken up about
16 the care that she received at Hanscom Clinic, and that was
17 something that Emily and I discussed.

18 Dr. Coleman, he explained to me a lot of things,
19 and he helped me understand how to go about that process.

20 I expressed this to Colonel Armstead again, in the
21 same meeting, and that was when I crafted a letter to
22 request a pediatrician other than an MTF.

23 Q And I'm going to show you a document.

24 MR. APPEL: And this is marked as Exhibit A,
25 your Honor. It's document 464.

1 Q Is this the letter that you discussed with Colonel
2 Armstead?

3 A Yes.

4 Q And did you discuss with him the content of the letter?

5 A Yes.

6 Q Including the sentence where it says, After talking --

7 MS. GOODWIN: Objection, your Honor.

8 Your Honor, this is not a stipulated exhibit. This
9 is a contested exhibit. So before the exhibit is read from,
10 I would like to address the issue of the admissibility of
11 this.

12 THE COURT: Go ahead.

13 I assume you're going to offer it?

14 MR. APPEL: I am, your Honor.

15 Maybe I should do a little bit more foundation to
16 clarify it further.

17 THE COURT: I just found it.

18 BY MR. APPEL

19 Q Had you and Colonel Armstead discussed the contents of
20 what this letter ultimately was?

21 A Yes.

22 Q And at some point in time you submitted the letter to
23 Colonel Armstead?

24 A Yes.

25 Q Did you actually do it in person?

1 A Yes.

2 Q The letter was dated March 14, 2000?

3 A Yes.

4 Q And this is your signature?

5 A Yes.

6 Q And right down at the bottom where it says "approved,"
7 that was approved by Colonel Armstead?

8 A Yes.

9 I was -- I contacted the clinic, and they told me
10 that the letter was ready. I came and picked that up.

11 At that point Emily was able to start searching for
12 a pediatrician, and that's how we got the pediatrics there
13 in Brookline.

14 MR. APPEL: And I am actually ready to ask the
15 question now, so if -- with respect to the sentence that
16 you're objecting to.

17 THE COURT: Well, I think I see the basis for
18 the objection.

19 It would be admissible, however, if -- and we're
20 not to that point yet -- on cross-examination there is a
21 suggestion that the witness does not have an actual memory
22 of the weighing procedures that were used. I mean this, as
23 I read it, would tend to be one of those instances where a
24 prior consistent statement would tend to corroborate, but
25 you haven't impeached the witness as yet. So why don't I

1 I just didn't think that was right. I was really
2 disappointed in how that whole dynamic was working, because
3 Emily and I were the only parents, and I was sort of just
4 trying to grasp everything that's going on. I wish he would
5 have come straight to me to tell me first, rather than
6 explain everything to Judy first.

7 Q So this created some stress between you and Judith
8 during this period of time?

9 A Yes.

10 I was -- Judy's fine, but at that moment, I wish he
11 would have just stepped down to try to let me sort of handle
12 it.

13 That's really it.

14 Q How -- after that short period of time, how has your
15 relationship with Judith Burnim been?

16 A It's fine.

17 We -- ironically, we never talked about the whole
18 incident. I don't even think she knows how annoying she was
19 at that time, but it's fine. I don't even bring it up.

20 Q But not just in terms of this incident, I mean how is
21 your relationship generally with Judith?

22 A It was good.

23 Q Were you also at the same conversation with Emily and
24 Dr. du Plessis?

25 A Yes.

1 Q What do you remember about that conversation?

2 A Well, I first met him -- I think Estella was in the
3 NICU. He was the attending -- the head neurologist, and he
4 explained to us in accurate detail exactly what had happened
5 to her.

6 He also went on to explain some of the things we
7 need to look for developmentwise, because I was asking him
8 specific questions. First and foremost, is she going to
9 live? What are some of the complications that are a result
10 of this?

11 Because as he started drawing up, he was talking
12 about the brain, and I know the brain controls everything.
13 So, I mean, she had had a very serious injury, and I was
14 really -- I just really wanted to know how we can come out
15 from all of this.

16 Q Do you remember anything specifically about what he
17 said?

18 A Yes.

19 He said that she may have some long-term
20 disabilities. He specifically added paralysis, where the
21 injury was could affect the other half of her body, the left
22 side of her body, developmentwise. Some mental issues.
23 Some learning disabilities that -- he said, We'll have to
24 wait and see as she gets older to see if she hits the marks.
25 Usually after she starts school, we'll be able to tell.